Crl. Rev. No. 774/01
(Old No. 1071 of 1997)
**Hon'ble Irshad Hussain, J.**

None appear for the revisionist. Heard Sri G.S.Sandhu learned A.G.A. and perused the record.

This is a revision under Section 397 & 401 of the Code of Criminal Procedure against the judgment and order dated 28.6.1997 passed by the Family Court, Nainital in criminal case no. 107/1996, whereby the revisionist was directed to be detented in prison in view of his making default in paying the maintenance allowance awarded to the wife-respondent no.1. Arrears of the maintenance allowance were to the tune of Rs. 40,000/- and considering this the application was rightly preferred under section 125(3) of the Code. However, it is evident that the impugned was passed without giving opportunity of hearing to the revisionist. Therefore, the order cannot be sustained in the eye of law and the same is liable to be set-aside.

The revision is allowed and the order dated 28.6.1997 is set aside. The learned Magistrate is directed to decide the application, if the same is still being pressed, accordingly to law after giving opportunity of hearing to the revisionist-husband.

**(Irshad Hussain, J.)**

Dated: 21-4-2004
Rawat